

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 340

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO LAND GRANTS; CONFORMING THE GOVERNING STATUTES OF
THE CHILILI LAND GRANT WITH THE PROVISIONS OF CHAPTER 49,
ARTICLE 1 NMSA 1978; PROVIDING PENALTIES; AMENDING, REPEALING
AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 49-4-1 NMSA 1978 (being Laws 1876,
Chapter 51, Section 1) is amended to read:

"49-4-1. CHILILI LAND GRANT-MERCED--RATIFICATION OF
PARTITIONS--GOVERNANCE.--[Sec. 41. That]

A. All apportionments or partitions of land on the
grant of Chilili [~~in precinct number ten of the county of
Bernalillo and state of New Mexico~~] made by Inez Armenta as
trustee or by his [~~successor or~~] successors as trustees of
[~~said~~] the grant to the bona fide residents [~~thereon, be and~~

.168323.1

underscored material = new
[bracketed material] = delete

1 ~~the same~~] on the grant are hereby confirmed.

2 B. The government and control of the common lands
3 of the Chilili land grant-merced, also known as la merced del
4 pueblo de Chilili, is vested in five trustees, to be known
5 officially as "the board of trustees of the Chilili land grant-
6 merced", who shall manage and control the land grant-merced in
7 accordance with the provisions of Chapter 49, Article 4 NMSA
8 1978."

9 Section 2. A new section of Chapter 49, Article 4 NMSA
10 1978 is enacted to read:

11 "[NEW MATERIAL] DEFINITIONS.--As used in Chapter 49,
12 Article 4 NMSA 1978:

13 A. "board of trustees" means the board of trustees
14 of the Chilili land grant-merced;

15 B. "common lands" means lands owned by the Chilili
16 land grant for the benefit of the heirs of the land grant-
17 merced;

18 C. "heir" means a person who is a descendant of the
19 original grantees and has an interest in the common land of the
20 land grant-merced through inheritance, gift or purchase;

21 D. "land grant-merced" means the grant of land made
22 by the government of Mexico to the town of Chilili in 1841,
23 which was confirmed by congress in 1858 and issued a patent by
24 the United States in 1909; and

25 E. "qualified voting member" means an heir who is

1 registered to vote in the land grant-merced as prescribed in
2 the land grant-merced bylaws."

3 Section 3. A new section of Chapter 49, Article 4 NMSA
4 1978 is enacted to read:

5 "[NEW MATERIAL] MANAGEMENT OF GRANT.--The Chilili land
6 grant-merced shall be controlled and governed by the Treaty of
7 Guadalupe Hidalgo, by the provisions of Chapter 49, Article 4
8 NMSA 1978 as a political subdivision of the state and by all
9 provisions of its bylaws not in conflict with the Treaty of
10 Guadalupe Hidalgo or state law."

11 Section 4. A new section of Chapter 49, Article 4 NMSA
12 1978 is enacted to read:

13 "[NEW MATERIAL] BOARD OF TRUSTEES--MANAGEMENT OF GRANT--
14 POWERS.--The board of trustees shall have the power to:

15 A. control, care for and manage the land
16 grant-merced and real estate owned by the land grant-merced;
17 prescribe the terms and conditions under which the common lands
18 may be used and enjoyed; and make all necessary and proper
19 bylaws, rules and regulations that shall be in substantial
20 compliance with applicable statutes for the government thereof;

21 B. sue and be sued and have the standing to sue in
22 law or equity to protect and expand the common lands of the
23 land grant-merced;

24 C. convey, lease or mortgage the common lands of
25 the land grant-merced in accordance with the land grant-merced

.168323.1

underscored material = new
[bracketed material] = delete

1 bylaws;

2 D. determine the number of animals that may be
3 permitted to graze upon the common lands and determine other
4 uses of the common lands that may be authorized;

5 E. prescribe the price to be paid for the use of
6 the common lands and resources of the land grant-merced and
7 prohibit a person failing or refusing to pay that amount from
8 using a portion of the common lands while the person continues
9 in default in those payments; provided that the amount fixed
10 shall be in proportion to the number and kinds of livestock
11 pasturing upon the common lands or to other authorized use of
12 the common lands;

13 F. adopt and use an official seal;

14 G. appoint judges and clerks of election at all
15 elections provided for in Chapter 49, Article 4 NMSA 1978 and
16 canvass the votes cast in those elections;

17 H. make bylaws, rules and regulations, not in
18 conflict with the constitution and laws of the United States or
19 the state of New Mexico, as may be necessary for the
20 protection, improvement and management of the common lands and
21 real estate and for the use and enjoyment of the common lands
22 and of the common waters of the land grant-merced;

23 I. determine land use, local infrastructure and
24 economic development of the common lands of the land
25 grant-merced; and

.168323.1

1 J. determine zoning of the common lands of the land
2 grant-merced pursuant to a comprehensive plan approved by the
3 local government division of the department of finance and
4 administration that considers the health, safety and general
5 welfare of the residents of the land grant-merced. The
6 department of finance and administration shall select a
7 qualified arbitrator to arbitrate for zoning conflicts between
8 the land grant-merced and neighboring municipalities and
9 counties."

10 Section 5. A new section of Chapter 49, Article 4 NMSA
11 1978 is enacted to read:

12 "[NEW MATERIAL] BOARD OF TRUSTEES--QUALIFICATIONS.--The
13 board of trustees shall consist of five members. If there is
14 more than one precinct in the land grant-merced, no more than
15 three members shall be residents of the same precinct;
16 provided, however, that if the precinct boundaries do not
17 coincide with the boundaries of the land grant-merced, the
18 board of trustees may create districts that better reflect the
19 distribution of population within the land grant-merced and
20 that any one of which has no more than three members of the
21 board of trustees as residents. A person shall be qualified to
22 be a member of the board if the person is a qualified voting
23 member and is not in default of any dues, rent or other payment
24 for the use of any of the common lands of the land grant-
25 merced."

.168323.1

1 Section 6. A new section of Chapter 49, Article 4 NMSA
2 1978 is enacted to read:

3 "[NEW MATERIAL] ELECTION OF MEMBERS OF BOARD OF TRUSTEES--
4 VOTERS' QUALIFICATIONS--REGISTRATION.--

5 A. Elections for the board of trustees shall be
6 held on the first Monday in April or on a day designated in the
7 bylaws, either every two or every four years as specified in
8 the bylaws of the land grant-merced.

9 B. All qualified voting members of the land
10 grant-merced are qualified to vote and may vote for trustees as
11 specified in the land grant-merced bylaws.

12 C. The registration of qualified voting members
13 shall be conducted in the manner prescribed in the Election
14 Code, substituting the words "board of trustees" and
15 "secretary" wherever the words "county commission" and "county
16 clerk" are used in that code.

17 D. The registration books compiled before each
18 election shall be used at that election. A person shall not
19 vote at the election unless duly registered in the books, and a
20 ballot of any unregistered person shall not be counted or
21 canvassed.

22 E. The board of trustees shall give public notice
23 in Spanish and English of the time of the election and fix and
24 give notice of the polling places in each precinct by handbills
25 posted in at least five public places in each precinct at least

.168323.1

1 fifteen days prior to the election. Notice shall also be given
 2 by publication fifteen days prior to the election in a
 3 newspaper in general circulation within the land grant-merced
 4 if there is one.

5 F. Elections shall be conducted, as nearly as is
 6 practicable, in the same manner as provided by law for the
 7 holding of general elections in this state. The judges and
 8 clerks of elections shall be appointed and the votes canvassed
 9 by the board of trustees."

10 Section 7. A new section of Chapter 49, Article 4 NMSA
 11 1978 is enacted to read:

12 "[NEW MATERIAL] ELECTION--CANVASSING VOTES.--The election
 13 judges and board of trustees shall meet not later than seven
 14 days following the election and canvass the votes cast and
 15 issue to each of the five persons having a majority of votes a
 16 certificate showing that each one has been duly elected."

17 Section 8. A new section of Chapter 49, Article 4 NMSA
 18 1978 is enacted to read:

19 "[NEW MATERIAL] ORGANIZATION OF BOARD--BONDS--VACANCIES.--

20 A. All members of the newly elected board of
 21 trustees shall meet no later than seven days after the votes
 22 are canvassed and organize themselves by the election of a
 23 president, secretary and treasurer. The treasurer shall
 24 perform such duties as may be required by the board and shall
 25 furnish to the board a good and sufficient surety bond in a sum

.168323.1

1 as set forth in this section, to be conditioned as are the
2 bonds of other public officials handling public money. It is
3 the duty of the treasurer to deposit all the money of the land
4 grant-merced in a bank organized and doing business in New
5 Mexico.

6 B. In the event of the death or resignation of the
7 treasurer, the board shall fill the vacancy by appointing one
8 of the members of the board as treasurer, who shall, before
9 entering into the performance of the duties as treasurer,
10 execute and furnish to the board a good and sufficient surety
11 bond, similar to the bond entered into by the predecessor.

12 C. The amount of the bond required of the treasurer
13 and the treasurer's successor shall at all times be for a sum
14 of at least double the amount received by and deposited in the
15 bank by the treasurer.

16 D. In the event the board of trustees delegates any
17 other of its members to collect money due the land grant-
18 merced, that person shall be bonded in the same manner as is
19 provided in this section for the bonding of the treasurer.

20 E. Those authorized to collect money shall give
21 receipts for the money collected, which receipts shall be in
22 the form prescribed by the board of trustees in the bylaws as
23 an official receipt."

24 Section 9. A new section of Chapter 49, Article 4 NMSA
25 1978 is enacted to read:

.168323.1

1 "[NEW MATERIAL] MEETINGS.--Regular meetings of the board
 2 of trustees shall be held no less than quarterly and in a
 3 public place as the board may determine in accordance with the
 4 bylaws. The time and place of regular meetings shall be posted
 5 in Spanish and English in a public place within the land grant-
 6 merced at least ten days prior to the meeting. Special
 7 meetings may be held at any time on call of the president, with
 8 five days' notice being given to each member."

9 Section 10. A new section of Chapter 49, Article 4 NMSA
 10 1978 is enacted to read:

11 "[NEW MATERIAL] QUORUM.--A majority of the members of the
 12 board of trustees shall constitute a quorum for the transaction
 13 of business, and the land grant-merced and its inhabitants
 14 shall be bound by the acts of the board pursuant to the
 15 provisions of Chapter 49, Article 4 NMSA 1978 and the land
 16 grant-merced bylaws."

17 Section 11. A new section of Chapter 49, Article 4 NMSA
 18 1978 is enacted to read:

19 "[NEW MATERIAL] SALE OR MORTGAGE OF COMMON LANDS--
 20 RESTRICTIONS.--

21 A. A conveyance of a portion of or all of the
 22 common lands of the land grant-merced shall be effective only
 23 if:

24 (1) the conveyance is made in accordance with
 25 the land grant-merced bylaws and this section;

.168323.1

1 (2) the conveyance is made for the benefit of
2 the land grant-merced;

3 (3) the board of trustees has approved a
4 resolution to make the conveyance at a regular meeting held in
5 accordance with Sections 9 and 12 of this 2007 act;

6 (4) the board of trustees has petitioned for
7 an order affirming the board's resolution from the district
8 court of the district in which the property is located; and

9 (5) the district court has issued an order
10 affirming the board of trustees' resolution pursuant to
11 Subsection D of this section.

12 B. An heir may file a written protest of a
13 conveyance with the board of trustees and the district court
14 within thirty days of the date that the resolution approving
15 the conveyance is passed by the board. The board of trustees
16 shall address and make a decision on the protest at a special
17 meeting held in accordance with Sections 9 and 12 of this 2007
18 act within thirty days of receiving the protest.

19 C. An heir dissatisfied with a decision of the
20 board of trustees may appeal to the district court of the
21 county in which the property is located in the following
22 manner:

23 (1) appeals to the district court shall be
24 taken by serving a notice of appeal upon the board within
25 thirty days of the decision. If an appeal is not timely taken,

.168323.1

1 the action of the board of trustees is conclusive;

2 (2) the notice of appeal may be served in the
3 same manner as a summons in civil actions brought before the
4 district court or by publication in a newspaper printed in the
5 county in which the property is located, once per week for four
6 consecutive weeks. The last publication shall be at least
7 twenty days prior to the date the appeal may be heard. Proof
8 of service of the notice of appeal shall be made in the same
9 manner as in actions brought in the district court and shall be
10 filed in the district court within thirty days after service is
11 complete. At the time of filing the proof of service and upon
12 payment by the appellant of the civil docket fee, the clerk of
13 the district court shall docket the appeal;

14 (3) costs shall be taxed in the same manner as
15 in cases brought in the district court, and bond for costs may
16 be required upon proper application; and

17 (4) the proceeding upon appeal shall be
18 de novo as cases originally docketed in the district court.
19 Evidence taken in a hearing before the board of trustees may be
20 considered as original evidence subject to legal objection, the
21 same as if the evidence was originally offered in the district
22 court. The court shall allow all amendments that may be
23 necessary in furtherance of justice and may submit any question
24 of fact to a jury or to one or more referees at its discretion.

25 D. If the district court finds that all

.168323.1

1 requirements of this section have been satisfied and that all
2 protests and appeals are concluded, the court shall issue its
3 order affirming the board of trustees' resolution conveying the
4 property.

5 E. After the district court issues its order, the
6 board of trustees shall execute the necessary documents in the
7 name and under the seal of the land grant-merced, and all heirs
8 shall be bound by the board's conveyance."

9 Section 12. A new section of Chapter 49, Article 4 NMSA
10 1978 is enacted to read:

11 "[NEW MATERIAL] MEETINGS TO BE PUBLIC--ANNUAL REPORT.--

12 A. All meetings of the board of trustees shall be
13 held in accordance with the Open Meetings Act. Executive
14 sessions shall not be held except in accordance with the Open
15 Meetings Act. All heirs of the land grant-merced shall have
16 the right to be present at all times when the board of trustees
17 is in session and to be heard on all matters in which they may
18 be interested.

19 B. The board of trustees shall annually make public
20 a report of all its transactions for that year. The report
21 shall include agendas, minutes, any actions taken and all
22 financial transactions. The report shall be maintained in a
23 public place and available for public review.

24 C. The secretary of the board of trustees shall
25 reduce to writing, in a book kept for that purpose, minutes of

1 the business transacted at each meeting of the board of
2 trustees."

3 Section 13. A new section of Chapter 49, Article 4 NMSA
4 1978 is enacted to read:

5 "[NEW MATERIAL] VACANCIES.--If a vacancy occurs on the
6 board of trustees, the remaining members shall fill the vacancy
7 by appointment made at a regular meeting. The person appointed
8 shall hold office until the next regular election."

9 Section 14. A new section of Chapter 49, Article 4 NMSA
10 1978 is enacted to read:

11 "[NEW MATERIAL] SALARIES OF TRUSTEES--RECORDS--
12 EXPENDITURES.--

13 A. The board of trustees may fix in the land
14 grant-merced bylaws and pay to its members a salary not to
15 exceed two hundred dollars (\$200) to any member in one month.
16 The salary as fixed shall be in full as compensation for the
17 duties performed by the board of trustees or the individual
18 members within the exterior boundaries of the land grant-
19 merced and for attendance at regularly scheduled meetings.
20 The secretary of the board of trustees may be allowed a
21 salary not to exceed two hundred twenty-five dollars (\$225)
22 in one month.

23 B. Board of trustees members may be authorized
24 per diem and mileage pursuant to the Per Diem and Mileage
25 Act.

.168323.1

underscored material = new
[bracketed material] = delete

1 C. The board of trustees and the treasurer shall
2 keep permanent and legible records capable of audit, and no
3 money or funds shall be paid by the board of trustees or by
4 any person authorized to expend money except by written check
5 drawn upon vouchers."

6 Section 15. A new section of Chapter 49, Article 4
7 NMSA 1978 is enacted to read:

8 "[NEW MATERIAL] DELINQUENCY--FORFEITURE.--A delinquent
9 heir shall lose all right that the heir may have had to use
10 the common lands of the land grant-merced unless the heir
11 pays in full all legal assessments or dues due by the heir."

12 Section 16. A new section of Chapter 49, Article 4
13 NMSA 1978 is enacted to read:

14 "[NEW MATERIAL] TRESPASS ON COMMON LANDS OR WATERS--
15 INJUNCTIONS.--The courts of this state shall entertain bills
16 of complaint filed by the board of trustees of the land
17 grant-merced to enjoin persons from trespassing upon the
18 common lands or using the common waters within the land
19 grant-merced if it appears that the complainant is without a
20 plain, speedy and adequate remedy at law or that the persons
21 committing trespass are insolvent or unable to respond in
22 damages."

23 Section 17. A new section of Chapter 49, Article 4
24 NMSA 1978 is enacted to read:

25 "[NEW MATERIAL] PROCESS--HOW SERVED ON BOARD.--Process

.168323.1

underscored material = new
[bracketed material] = delete

1 in all actions or suits against the board of trustees of the
2 land grant-merced shall be served upon the president or, in
3 the president's absence, upon the secretary."

4 Section 18. A new section of Chapter 49, Article 4
5 NMSA 1978 is enacted to read:

6 "[NEW MATERIAL] REGISTRATION.--The board of trustees
7 shall register its bylaws and a list of current officers with
8 the secretary of state in accordance with the provisions of
9 Section 49-1-23 NMSA 1978. The board of trustees shall
10 notify the secretary of state of the names and positions of
11 the land grant-merced's elected or appointed officers upon
12 their election or appointment."

13 Section 19. A new section of Chapter 49, Article 4
14 NMSA 1978 is enacted to read:

15 "[NEW MATERIAL] FAILURE OF TRUSTEE TO PERFORM DUTIES--
16 PENALTY.--Any member of the board of trustees who fails or
17 refuses to perform any of the duties required to be performed
18 by the board of trustees of the land grant-merced by Chapter
19 49, Article 4 NMSA 1978 or by any other law of New Mexico is
20 guilty of a misdemeanor and upon conviction shall be punished
21 by a fine of not less than twenty-five dollars (\$25.00) nor
22 more than one hundred dollars (\$100) or by imprisonment in
23 the county jail for a period of not less than thirty days nor
24 more than ninety days, or both."

25 Section 20. A new section of Chapter 49, Article 4

.168323.1

1 NMSA 1978 is enacted to read:

2 "[NEW MATERIAL] RIGHTS OF LESSEES AND PURCHASERS.--

3 A. A person who is not an heir and who purchases
4 or leases property within the limits of the land grant-merced
5 shall only have a right to the lands acquired through the
6 purchase or lease but not to any common lands within the land
7 grant-merced.

8 B. The provisions of Chapter 49, Article 4 NMSA
9 1978 shall not diminish, extinguish or otherwise impair any
10 private property interest located within the boundaries of
11 the land grant-merced or be construed to grant the board of
12 trustees regulatory authority over such property interests or
13 lands other than the common lands held by the land grant-
14 merced. As used in this subsection, "property interest"
15 includes valid easements and rights of access, but does not
16 include use rights to the common lands of the land grant-
17 merced."

18 Section 21. REPEAL.--Sections 49-4-2 and 49-4-3 NMSA
19 1978 (being Laws 1876, Chapter 51, Sections 2 and 3, as
20 amended) are repealed.

21 Section 22. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2007.